IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.687 OF 2005

1. Sou. Vatsala Tukaram Kale
2. Shri Dilip Tukaram Kale
3. Sou. Shashikala Dilip Kale
4. Shri Shrikant Tukaram Kale
5. Sou. Usha Shrikant Kale
6. Shri Vishal Dilip Kale
7. Ku. Pallavi Dilip Kale
8. Ku. Jeevan Dilip Kale
9. Ku. Sulakshana Shrikant Kale
10. Ku. Vijeyata Shrikant Kale
11. Smt. Draupada Ekanath Kale
12. Sou. Shubhada Shau Ganjawe
13. Sou. Alka Anant Tupa
14. Sanjay Eknath Kale
15. Sou. Sangeeta Sanjay Kale
16. Shri Nandu Ekanath Kale
17. Sou. Hemlata Nandu Kale
18. Sou. Satyabhama Murlidhar Kale
19. Sou. Rajendra Murlidhar Kale
20. Sou. Shobha Rajendra Kale
21. Shri Mahendra Murlidhar Kale
22. Sou. Sunanda Mahendra Kale
23. Shri Deepak Murlidhar Kale
24. Sou. Smita Deepak Kale
25. Shri Uday Murlidhar Kale
26. Shri Shukraraj Murlidhar Kale
27. Shri Suryakant Sopan Kale
28. Yashoda Suryakant Kale
29. Ku. Smita Suryakant Kale
30. Ku. Avinash Suryakant Kale
31. Ku. Amita Suryakant Kale
32. Sou. Rakhamabai Kisan Kunjir
33. Sou. Shakuntala Kisan Ghule
34. Ku. Tejas Sanjay Kale
35. Ku. Harshada Sanjay Kale
36. Ku. Sayali Nandu Kale
37. Ku. Supriya Rajendra Kale
38. Ku. Shehal Rajendra Kale
39. Ku. Achal Mahendra Kale ...Appellants
(Orig.Plaintiffs)

Versus

1. Shri Mangesh Vijayram Unecha
2. Shri Santosh Vijayram Unecha
3. Shri Kantilal Kesari Sanghavi

4. M/s. Townscape Associates
5. Shri Niranjan S. Kelshikar
6. Shri Milapchand W. Khadiwala
7. Shri Tukaram Sopan Kale
8. Shri Murlidhar Sopan Kale... Respondents
(Orig.Defendants)

Shri Vineet B. Naik i/b. M/s.Kiran Jain & Co. for the Appellants
Shri P.S. Dani for the Respondent Nos. 1 and 2
Shri V.G. Mujumdar for the Respondent No.3

CORAM : S.R. SATHE,J.
DATED : 10/09/2007

ORAL ORDER :-

1. The Appellants-original Plaintiffs in Special Civil Suit No.347 of 2005 have preferred this appeal against the order passed by the Court of Second Joint CJSD, Pune whereby Plaintiffs' application for temporary injunction restraining defendant Nos.1 to 3 from entering into the suit land bearing Survey No.26A/2A/1 and Survey No.26A/2A/2 situated at Hadapsar and disturbing Plaintiffs' possession of the said land was dismissed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'Defendants'.

2. The brief facts giving rise to this appeal are as under :-

The abovementioned lands are the ancestral lands of Plaintiffs. By virtue of development agreements dated 25th,26th,27th& 28th May,1995, Plaintiffs

agreed to give the said lands to defendant No.4 partnership firm for development. The defendant Nos.3,5 and 6 are partners of defendant No.4 partnership firm. By the said agreements, the Plaintiffs agreed that the defendant Nos.3 to 6 may carry out construction on the said lands as per their choice after obtaining necessary permission etc. from the competent authority and to dispose of the said tenements or flats to different persons to a price which they like. They also authorized defendant Nos. 3 to 6 to take all necessary steps for development of the said properties and agreed that after completion of the development, Plaintiffs would execute sale deed of the said property in favour of defendant Nos.3 to 6 or any other person as asked by the defendants. On 28/05/1995, Plaintiffs also executed power of attorney in favour of defendant Nos.3,5 and 6 and authorized them to do all acts that are necessary to be carried out by the Plaintiffs as owners of the property. It is Plaintiffs' case that the defendant No.4 accordingly started development after getting the said lands sub-divided into plots and getting plan sanctioned from Pune Municipal Corporation. The defendant No.4 completed construction of some buildings and sold the flats out of the same to the purchaser. However, some time in the beginning of the year 2005,

Plaintiffs came to know that some dispute arose between partners of defendant No.4 firm and defendant No.3 retired from partnership vide deed of retirement dated 30/05/2003. By virtue of the said retirement deed, defendant No.4 agreed to give right to develope plot No.6 out of the suit property to defendant No.3 in lieu of his relinguishment of his rights in the partnership firm and assets including goodwill. The defendant No.4 accordingly executed development agreement in favour of defendant No.3 in respect of plot No.6. Not only that but the defendant Nos. 5 and 6 also executed power of attorney in favour of defendant No.3 to sale the said plot. Plaintiffs came to know that defendant No.3 has sold the said plot to defendant Nos.1 and 2 on 27/05/2004 by virtue of registered sale deed.

3. According to Plaintiffs, though they had executed development agreement and power of attorney in favour of defendant No.4 they never authorized defendant No.4 to sale the suit property nor they had allowed the defendant Nos.3,5 and 6 to sub-delegate their power which Plaintiffs had given to them under the power of attorney. Thus, according to Plaintiffs, defendant No.3 had no right to sale the plot No.6 to defendant Nos. 1 and 2 and the said sale deed was

illegal. Hence, Plaintiffs filed special suit for declaration that the sale deed executed by defendant No.3 in favour of defendant Nos.1 and 2 is illegal and void and that the same is binding on the Plaintiffs. They also prayed for permanent injunction restraining defendant Nos. 1 to 3 from entering into suit plot No.6.

4. On the date of filing of the suit, Plaintiffs also filed an application Exh-5 for temporary injunction restraining defendant Nos. 1 to 3 from entering into plot No.6 and disturbing Plaintiff's possession. The Plaintiffs also made it clear that they are not claiming any relief against defendant Nos.4 to 8.

5. The defendant Nos.1 to 3 filed their joint written say to the application and opposed the Plaintiffs' claim. They admitted that the suit property was the ancestral property of the Plaintiffs and Plaintiffs executed development agreement as stated by the Plaintiffs. They also agreed execution of power of attorney in favour of defendant Nos. 3,5 and 6. They, however, denied Plaintiffs allegation that the defendant Nos. 3 to 6 were not entitled to sale the

suit property. According to them, such right was specifically given to defendant Nos.3,5 and 6 by virtue of the power of attorney executed in their favour. Defendant Nos. 1 to 3 also contended that by virtue of retirement deed and power of attorney executed by defendant Nos. 5 and 6 in favour of defendant No.3, he was authorized to develop plot No.6 and even to sale the same. According to them, there was no such specific stipulation in the power of attorney executed by Plaintiffs in favour of defendant Nos. 3,5 and 6 prohibiting them from sub-delegating the powers given to them. They also contended that Plaintiffs have in fact received entire consideration of the suit property and have failed to make out any prima facie case for granting temporary injunction. They also contended that defendant Nos. 1 and 2 have purchased the suit plot No.6 for Rs.11 lakhs and if temporary injunction is granted as prayed then they would suffer irreparable loss and inconvenience. As against this, Plaintiff would not suffer any loss and there would not be any change in their position as they have already received the entire consideration. Hence, on all these grounds, defendant Nos.1 to 3 prayed for the dismissal of the application.

6. The defendant Nos.4 to 6 also filed their joint say and submitted that they had taken suit property for development and as the dispute arose, the defendant No.3 retired from the partnership and the retirement deed was executed and at that time, defendant Nos.5 and 6 also executed power of attorney in favour of defendant No.3. They, however, submitted that defendant No.3 was never authorized to sale the said land or any part thereof.

7. After hearing the arguments of both the learned Advocates and considering the documents produced by both the parties, learned Trial Judge came to the conclusion that Plaintiffs have failed to make out any prima facie case for granting temporary injunction and balance of convenience is also not in their favour. Naturally, he rejected Plaintiffs' application.

8. Being aggrieved by the said order, Plaintiffs have filed the present appeal. In this appeal before me Shri Vinit Naik, learned Advocate for the Plaintiffs-Appellants has urged only two points. Firstly, he submitted that learned Trial Judge ought to have held that by virtue of development agreement Plaintiffs-original owners had not parted with the possession and

only development rights were given to the defendant No.4 firm. Secondly, he canvassed before me that the defendant No.3 to 6 were not at all authorized to sale the suit land or any part thereof and they were also not authorized to sub-delegate powers which were given to them by Plaintiffs by executing power of attorney in their favour. He, therefore, submitted that considering these two aspects it be held that the sale deed executed by defendant No.3 in favour of defendant Nos. 1 and 2 is not legal and valid and on the basis of the said sale deed, defendant Nos. 1 and 2 are not entitled to enter the plot No.6. He, therefore, submitted that the appeal be allowed and temporary injunction as prayed by the Plaintiff be issued against defendant Nos.1 to 3. As against this, Shri P.S. Dani, learned Advocate for the defendant Nos. 1 and 2 supported the order passed by the learned Trial Judge and submitted that in the instant case the owners have not only executed development agreement in favour of defendant Nos. 3 to 6 but they have also executed specific power of attorney in favour of defendant Nos.3,5 and 6 and as a result of the same, they were authorized to sale the suit property or any part thereof or the flats constructed on the suit property. There was no prohibition for sub-delegating the powers given to

them. He also submitted that Plaintiffs have in fact received the entire consideration and it is only with a view to create hurdle in the development and to extract more money Plaintiffs have filed the present suit. They have not come to the Court with clean hands and the balance of convenience is not at all in their favour. He, therefore, submitted that appeal be dismissed.

9. It is not in dispute that suit property was the ancestral property of the Plaintiffs and that they executed development agreement in favour of defendant No.4 partnership firm and that defendant Nos.3,5 and 6 are the partners of the said firm. It is also admitted that the Plaintiffs have executed power of attorney in favour of defendant Nos.3,5 and 6 i.e. partners of the defendant No.4 firm on 28/05/1995. It is also admitted that defendant No.3 retired from the partnership and the deed of retirement was executed on 30/05/2003 and the defendant Nos. 5 and 6 gave plot No.6 out of the suit property to defendant No.3 in lieu of defendant No.3 relinguishing his all rights in partnership. Not only that but admittedly defendant Nos.5 and 6 executed power of attorney in favour of defendant No.3 and gave him rights to develop plot No.6. They also gave him rights even to sale the same.

10. The main and the material question is whether defendant Nos.5 and 6 were justified in giving plot No.6 to defendant No.3 and giving him development rights and rights to sale the said plot. For that purpose, we have to see development agreement as well as the power of attorney executed by Plaintiffs. If we read the development agreement then it does appear from the same that defendant partnership firm was allowed to develop the property and to sale the suit property and to sale flats in the building constructed on the suit property to persons of their choice and also at a price of their discretion. Not only that but, in the development agreement it is clearly stated that after completion of the development Plaintiffs would execute the sale deed in favour of defendant No.4 or in favour of different flat purchasers or in favour of society or in favour of any other person as stated by the developer i.e. defendant No.4. Thus, from this development agreement, it appears that though, developer was authorized to sale flats and to take consideration of the same for him only, still ultimately sale deed was to be executed by the Plaintiffs in favour of developer or any other person as stated by the developer. However, in the instant

case, the Plaintiffs have also executed power of attorney in favour of defendant Nos.3,5 and 6 and they have given some specific powers to the defendants and these powers have in fact made all the difference between the normal case of development agreement and the present case.

11. In the power of attorney which is executed by the Plaintiffs in favour of defendant Nos. 3,5 and 6 in Clause-1B, it is mentioned that lands bearing Survey No.26A Hissa No.2A/1/1 as well as land bearing Survey No.26A Hissa No.2A/2 (suit property) will be referred as "सदर मिळकत" (suit property) in the power of attorney. Then in clause-16 of the said power of attorney it is mentioned :-

> "सदरील मिळकत वा तिचा भाग एक वा अनेक खरेदीखताने वा इतर अन्य कोणतेही प्रकारच्या कराराने कोणाही व्यक्तीस, संस्थेस, तबदील वा हस्तांतर करणे. त्यासाठी आवश्यक ते करार करणे, ते मेहरबान सब-रजिस्टार हयांचेकडे नोंदवणे, तसेच त्याबददल मिळणारी रक्कम स्विकारणे व त्याबददल पावती देणे."
>
> (To sale the said property or any part thereof by one or several sale deeds

or transfer the said property in favour of any person, association by any agreement or to enter into agreement required for that purpose, to register the said agreement with sub-registrar, to receive amount and issue receipt.)

It is clearly mentioned that defendant Nos.3, 5 and 6 are empowered or to authorize to do all the above mentioned acts mentioned in clause-16. Not only that but further in clause-17 it is clearly mentioned :-

"आमचेवतीने सदरील मिळकत वा तिच्या भागाचे डिक्लेरेशन करणे तसेच गाळेधारकांशी डीड ऑप- अपार्टमेन्ट करणे. वरील सर्व खरेदीखत वा डिक्लेरेशन वा डीड ऑप- अपार्टमेन्टवर आमचेवतीने सहया करणे व ते मे. सबरजिस्टार हयांचेकडे नोंदविणे.***"(emphasis is mine)***

(To do on our behalf any declaration in favour of flat holders or to execute deed of apartment or Sale Deed and to sign all these deeds on our behalf and to register it with the sub-registrar.)

12. So, the defendant Nos.3,5 and 6 were specially

authorized even to sale the suit land, suit property entirely or any part thereof to any one for and on behalf of original owners. When such specific authority was given to them, there was absolutely nothing wrong and illegal when defendant Nos.5 and 6 gave plot No.6 to defendant No.3 for development and also executed power of attorney in his favour to develop the property. Plaintiffs themselves have even stated in the plaint that defendant Nos. 5 and 6 had also executed power of attorney in favour of defendant No.3 to sale the said property. Once such specific right was given originally to defendant Nos.3,5 and 6, there was no necessity to mention again in the said power of attorney that power of attorney holders can not further sub-delegate the said power. In the present case, it has to be held like that because Plaintiffs have in fact received the entire consideration from the development agreement. It appears that some fraction of the total consideration was to be paid at the time of sale deed but it is not at all argued before me that now any amount out of the amount mentioned in the development agreement is due to the Plaintiffs. Even if any such amount is due still then at the most it can be said that defendant No.3 is liable to pay the said amount or amount of his share out of the total amount

which has remained to be paid. But, in any event it can not be said that defendant Nos.5 and 6 were not entitled to give suit plot No.6 to defendant No.3 or that they were not entitled to give all powers in respect of that plot to defendant No.3. In the instant case, the defendant No.3 has in fact received necessary powers even to sale the plot No.6 and by exercising such powers, defendant No.3 has sold the suit plot to defendant Nos. 1 and 2. If we peruse the copy of the sale deed executed by defendant No.3 in favour of defendant Nos. 1 and 2 then it is pertinent to note that the said sale deed appears to have been executed by all the Plaintiffs because their names are shown as persons executing the deed (लिहून देणार). Not only that but it is also clearly mentioned in the said sale deed that defendant Nos. 5 and 6 have also executed power of attorney in favour of defendant No.3. So, in a way this sale deed executed by defendant No.3 in favour of defendant Nos. 1 and 2 can be said to be a sale deed executed by the power of attorney holders of the Plaintiffs as specific power was given to defendant Nos. 3,5 and 6 to sale the suit property. It is not at all the case of the Plaintiffs that at any point of time the power of attorney executed by them in favour of defendant Nos.3,5 and 6 was cancelled. So, under

such circumstances, I have no hesitation to hold that the sale deed executed by the defendant No.3 in favour of defendant Nos.1 and 2 is legal and valid. There is absolutely nothing on record to show that the Plaintiffs have got any right to object the execution of such sale deed. So, learned Trial Judge has rightly held that Plaintiffs have failed to make out prima facie case.

13. It appears that defendant Nos. 1 and 2 have parted with huge amount of Rs.11 lakhs for purchase of the plot No.6 and they are put in possession of the property, as a result of the sale deed. If temporary injunction is granted against them it would certainly cause great hardship and irreparable loss to them. It would amount to depriving them from getting the fruits or returns of their investment. As against this, if injunction is not granted no loss much less irreparable loss is likely to be caused to the Plaintiffs. Plaintiffs have in fact received the entire consideration and even if it is held that some fraction of the said consideration is yet to be received still then sale deed executed by defendant No.3 to defendant Nos. 1 and 2 can not be said to be illegal or void. So, looking to the case from any angle, it is very clear

that Plaintiffs are not entitled for the temporary injunction as prayed.

14. In this view of the matter, there is no substance in this appeal. Hence, I pass the following order :-

Appeal is dismissed with costs.

(S.R.SATHE,J.)